

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION**

FILED

12/20/2019

Clerk, U.S. District Court
District of Montana
Helena Division

SAUNDERS OUTDOOR
ADVERTISING, INC.,

Plaintiff/Counter Defendant,

vs.

ASPEN MANAGEMENT, LLC, and
BUTANA SAND AND GRAVEL,
LLC,

Defendants/Aspen Management,
LLC Counter Plaintiff.

ASPEN MANAGEMENT, LLC,

Third-Party Plaintiff,

vs.

SUMMIT VALLEY TITLE
COMPANY, a Montana Domestic
Profit Corporation,

Third-Party Defendant.

No. CV-19-26-BU-SEH

ORDER

BACKGROUND

Pending before the Court is Defendant Aspen Management, LLC's ("Aspen Management") Motion to Set Aside Clerk's Entry of Default.¹

¹ Doc. 47.

On October 1, 2019, Defendant Butana Sand and Gravel, LLC (“Butana”) filed Defendant Butana’s Answer to Second Amended Complaint and Crossclaims Against Aspen Management, LLC.² Aspen Management’s answer to Butana’s cross-claims was due on October 24, 2019.³ No answer to Butana’s cross-claims was filed.

On November 18, 2019, Butana filed Butana’s Request for Entry of Default Against Aspen Management, LLC.⁴ Aspen Management’s default on Butana’s cross-claims was entered on November 20, 2019.⁵

On November 21, 2019, Aspen Management moved to set aside the entry of default⁶ and filed an accompanying brief⁷ on November 25, 2019.

Aspen Management alleges its failure to answer Butana’s cross-claims was “an inadvertent omission, not a conscious disregarding of a pleading obligation.”⁸

² Doc. 27.

³ See Doc. 29.

⁴ Doc. 44.

⁵ See Doc. 46.

⁶ See Doc. 47.

⁷ See Doc. 48.

⁸ Doc. 47 at 4.

DISCUSSION

Federal Rule of Civil Procedure 55(c) permits the court to set aside an entry of default for good cause. The determination of good cause is within the court's discretion.⁹ Relief from default is favored. Doubt as to whether good cause exists should be resolved in favor of the defaulting party.¹⁰ Factors the Court may consider when determining if good cause exists in this case, include: "(1) whether [Aspen Management] engaged in culpable conduct that led to default; (2) whether [Aspen Management] had a meritorious defense; or (3) whether reopening the default [] would prejudice [Butana]."¹¹

CONCLUSION

"If a defendant 'has received actual or constructive notice of the filing of the action and failed to answer,' its conduct is culpable."¹² However, Aspen

⁹ See *Hawaii Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 513 (9th Cir. 1986).

¹⁰ See *Civic Ctr. Square v. Ford (In re Roxford Foods)*, 12 F.3d 875, 879, 881 (9th Cir. 1993).

¹¹ *Franchise Holding II, LLC v. Huntington Rests. Group, Inc.*, 375 F.3d 922, 925-26 (9th Cir. 2004).

¹² *Franchise Holding II, LLC v. Huntington Rests. Group, Inc.*, 375 F.3d 922, 926 (9th Cir. 2004) (quoting *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 690 (9th Cir.1988)).

Management may have meritorious defenses to Butana's cross-claims¹³ and reopening the default will not prejudice Butana. The entry of default against Aspen Management is VACATED and SET ASIDE.

ORDERED:

1. Defendant Aspen Management, LLC's Motion to Set Aside Clerk's Entry of Default¹⁴ is GRANTED.

2. Aspen Management shall file an amended answer to the Second Amended Complaint¹⁵ to address Butana's cross-claims on or before December 27, 2019.

DATED this 20th day of December, 2019


SAM E. HADDON
United States District Court

¹³ See Doc. 48 at 10-11.

¹⁴ Doc. 47.

¹⁵ Doc. 25.